

FEDERAL LAND AND THE ANTIQUES ACT

WHAT IS THE ANTIQUES ACT?

Signed in 1906 by President Theodore Roosevelt, the Antiquities Act gives the president broad authority to designate “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” as national monuments by presidential decree- that is, without Congressional approval.

The original intent of the Act was a narrow one: archaeological sites across the American Southwest (“antiquities”) were being looted and destroyed, and the government needed a speedy way to protect these treasures and resources. The bill’s authors considered limiting the size of national monuments to as little as 320 acres (2). The final language, however, allowed for an incredibly broad interpretation of its meaning. Progressive-era powers to be a useful “back door” method of establishing national-park-like land protections. Presidents ever since have abused the Act to lock up large tracts of federal land from energy and resource exploration, all without the consent of Congress.

WHAT’S AT STAKE?

Most federal lands are managed using the “multiple use” approach, with land shared among its various competing uses – conservation, recreation, and economic development. The appropriate balance is determined with significant public input. Such lands may be leased for oil, natural gas, mineral, timber, cattle grazing, or other forms of economic development that bring jobs to the local economy.

Once land is designated as a national monument, however, heavy restrictions are put in place to protect its special historical or scientific characteristics. Each “monument” has a unique combination of land-use restrictions, but typically economic development uses (especially energy and mineral development) are limited in favor of conservation. While some monument designations have been relatively uncontroversial, others have caused public outrage.

CONTROVERSY OVER THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

With the stroke of a pen on September 18, 1996, President Bill Clinton turned a whopping 1.9 million acres in southern Utah into the Grand Staircase-Escalante National Monument, citing Antiquities Act authority. Environmentalists demanded that the area’s “spectacular array” of resources and “unspoiled natural area” be protected, and Clinton refused to wait for Congressional action (3).

QUICK FACTS

- The federal government owns more than half of the land in NV, AK, UT, OR, and ID, and well over a third of the land in AZ, CA, WY, NM, and CO (1).
- There are currently 101 National Monuments covering over 12 million acres of land. The largest is the 2.3-million-acre Misty Fjords in Alaska, created in 1978 by President Jimmy Carter. The smallest is the African Burial Ground, covering one city block in New York City, created in 2006 by President George W. Bush.
- When President Clinton created Utah’s Grand Staircase-Escalante National Monument in 1996, the proclamation locked up an estimated 62 million tons of coal

In justifying his declaration, President Clinton focused extensively on the value of the land for scientific (especially biological) study. But nearly 15 years after the monument was created the position of “Monument Science Coordinator” remained unfilled and a “Science Plan” that would outline the Monument’s “science needs and strategy” had yet to be completed.

“The focus on science has not been the driving management priority in recent years,” wrote the monument’s managers in August 2010 – an understatement indeed (4).

While environmental groups applauded the decision, others were angered by the move. In addition to questioning the legality of the monument and the procedures used to create it (the proclamation came with little public debate of consultation with state and local officials), critics also raised strong concerns about the impact it would have on Utah’s economy. “I feel deeply that President Clinton did not keep the public trust,” said then-Governor Mike Leavitt (5).

Soon after the proclamation, a report from the Utah Geological Survey found that the value of energy and mineral resources now trapped on monument lands was between \$223 and \$330 billion. Coal mining under the Kaiparowits Plateau alone would have yielded an estimated \$20 billion in federal and state tax revenues (6). Existing contracts for energy and mineral development would not be canceled, but producers would be forced to comply with the monument’s new protections, including stringent environmental standards and limited infrastructure access. New development was entirely prohibited.

Despite bipartisan outrage and calls to reform the Antiquities Act to prevent such abuses, Congress did not vote to abolish the monument and the Act remains unchanged today.

WILL PRESIDENT OBAMA USE THE ANTIQUITIES ACT?

Early last year, an internal Interior Department memo leaked to the press containing plans to create 14 new national monuments. The “nationally significant landscapes” that were listed cover more than 13 million acres of land in Western states, and may contain large deposits of oil, natural gas, coal, and other mineral resources (7).

The Obama administration downplayed the reports, with a spokesperson for the Department of the Interior calling it nothing more than a “very, very, very preliminary” brainstorming document. But with the 1996 “stroke of the pen” still fresh in their minds, it was no surprise that the public reacted strongly against the news. “Given the lingering frustration felt by many Utahans,” argued Congressman Jim Matheson, “it is totally inappropriate for this federal agency to even have preliminary discussions without involving the stakeholders on the ground” (8). President Obama has not yet used his Antiquities Act authority.

The Antiquities Act represents a dangerous kind of unchecked presidential authority and a threat to energy development and property rights. Protecting national treasures is important, but in order to restore the proper constitutional balance-of-powers these highly-consequential land management decisions should require approval by a majority of both houses in Congress.

Endnotes:

1. Frank Jacobs, Federal Lands in the U.S., Big Think Strange Maps (June 16, 2008) (online at <http://bigthink.com/ideas/21343>).
2. Robert W. Righter, National Monuments to National Parks: The Use of the Antiquities Act of 1906, Western Historical Quarterly (August 19989) (online at <http://www.cr.nps.gov/history/hisnps/npshistory/righter.htm>).
3. President William J. Clinton, Proclamation Number 6920 (61 Fed. Reg. 50, 223) (Sept. 24, 1996) (online at <http://www.presidency.ucsb.edu/ws/?pid=51948>).
4. Bureau of Land Management, Grand Staircase-Escalante National Monument Management Plan Implementation Review, at 11 (August 4, 2010) (online at http://www.blm.gov/pgdata/etc/medialib/blm/ut/grand_staircase-escalante/nlcs.Par.3452.File.dat/GSENMreportFinal.pdf).
5. Subcommittee on National Parks and Public Lands, 105th Cong., Prepared Testimony of Utah Governor Michael O. Leavitt, Establishing the Grand Staircase-Escalante National Monument, at 115 (Apr. 29, 1997) (online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_house_hearings&docid=f:41269.wais.pdf).
6. M. Lee Allison, A Preliminary Assessment of Energy and Mineral Resources Within the Grand Staircase-Escalante National Monument, Utah Geological Survey Circular No. 93 (January 1997) (online at <http://geology.utah.gov/online/c/c-93/gsenmcir.htm>).
7. Office of Congressman Rob Bishop (UT-01), President Eyes New National Monument Sites Throughout West (February 18, 2010) (online at <http://robbishop.house.gov/News/DocumentSingle.aspx?DocumentID=170792>).
8. Kirk Johnson, In the West, 'Monument' Is a Fighting Word, New York Times (February 19, 2010) (online at <http://www.nytimes.com/2010/02/20/us/politics/20Utah.html>).

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